

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	File No. EB-09-TC-143
)	
PriorityOne Telecommunications, Inc.)	NAL/Acct. No. 200932170102
)	
Apparent Liability for Forfeiture)	FRN: 0004272373
)	
)	

ORDER

Adopted: July 24, 2009

Released: July 24, 2009

By the Chief, Enforcement Bureau:

I. INTRODUCTION AND BACKGROUND

1. In this Order, we cancel a proposed forfeiture in the amount of three thousand dollars (\$3,000) issued to PriorityOne Telecommunications, Inc. ("PriorityOne") for apparent violation of section 222 of the Communications Act of 1934, as amended (the "Act"),¹ section 64.2009(e) of the Commission's rules,² and the Commission's *EPIC CPNI Order*,³ by failing to timely file an compliant annual customer proprietary network information ("CPNI") compliance certification with the Commission on or before March 1, 2008.

2. On February 29, 2008, PriorityOne filed a certification pursuant to section 64.2009(e) of the Commission's rules with the Commission's Secretary. In reviewing the certifications filed, the Bureau determined that the certification filed by PriorityOne did not comply with the requirements of the rule. In particular, the Bureau determined that the certification was not signed by an officer of the company with personal knowledge and lacked an explanation of actions taken against databrokers. Accordingly, the Bureau issued to PriorityOne a *Notice of Apparent Liability for Forfeiture* ("NAL")⁴ proposing a forfeiture in the amount of three thousand dollars (\$3,000) based on PriorityOne's apparent violation of section 222 of the Act,⁵ section 64.2009(e) of the Commission's rules,⁶ and the Commission's

¹ 47 U.S.C. § 222.

² 47 C.F.R. § 64.2009(e).

³ *Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information; IP-Enabled Services*, CC Docket No. 96-115; WC Docket No. 04-36, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 6927, 6953 (2007) ("*EPIC CPNI Order*"); *aff'd sub nom. Nat'l Cable & Telecom. Assoc. v. FCC*, No. 07-132, (D.C. Cir. decided Feb. 13, 2009).

⁴ *PriorityOne Telecommunications, Inc.*, Notice of Apparent Liability for Forfeiture, -- FCC Rcd --- (Enf. Bur. Feb. 25, 2009) ("*NAL*").

⁵ 47 U.S.C. § 222.

⁶ 47 C.F.R. § 64.2009(e).

EPIC CPNI Order by failing to timely file a complaint annual compliance certification with the Commission.

II. DISCUSSION

3. In response to the *NAL*, PriorityOne demonstrated that the certification filed with the Secretary was in fact in compliance with the rule.⁷ However, the certification was scanned imperfectly into the Commission's Electronic Comment Filing System ("ECFS") and thus appeared to the Bureau to be missing certain information. Upon review of the record, we agree with PriorityOne that our *NAL* was in error because PriorityOne had filed an annual CPNI compliance certificate that was signed by an officer of the company with personal knowledge and an explanation of any actions taken against data brokers. For this reason, the *NAL* issued to PriorityOne should be cancelled.

4. Accordingly, based on the record, we find that PriorityOne did not willfully and repeatedly violate section 222 of the Act,⁸ section 64.2009(e) of the Commission's rules,⁹ and the Commission's *EPIC CPNI Order*. Consequently, we conclude that no forfeiture should be imposed.

5. **ACCORDINGLY, IT IS ORDERED** that, pursuant to section 503(b) of the Communications Act of 1934, as amended ("Act"), and sections 0.111, 0.311 and 1.80(f) (4) of the Commission's rules, that the proposed forfeiture in the amount of three thousand dollars (\$3,000) issued to PriorityOne Telecommunications, Inc. in the February 25, 2009 *Notice of Apparent Liability for Forfeiture* for willful and repeated violations of a Commission rule **IS CANCELLED**.

6. **IT IS FURTHER ORDERED** that a copy of this Order shall be sent by First Class Mail and Certified Mail Return Receipt Requested to PriorityOne, to its attorney of record, attn: James M. Smith, Davis Wright Tremaine LLP, 1919 Pennsylvania Ave., NW, Suite 200, Washington, DC 20006.

FEDERAL COMMUNICATIONS COMMISSION

Kris A. Monteith
Chief, Enforcement Bureau

⁷ See e-mail from James M. Smith, Davis, Wright, Tremaine, counsel for PriorityOne, to Marcy Greene, Deputy Chief, Telecommunications Consumers Division, Enforcement Bureau (Feb. 25, 2009).

⁸ 47 U.S.C. § 222.

⁹ 47 C.F.R. § 64.2009(e).